

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

§ 4109. Right to counsel, appointment of counsel

(a) In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with section 3006A of this title. Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;¹

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 3006A of this title for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3324(a) and (b) of title 31, the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(b) Guardians ad litem appointed by the verifying officer under section 4100 of this title to represent offenders who are financially unable to provide for compensation and travel expenses of the guardian ad litem shall be compensated and reimbursed under subsection (a)(1) of this section.

(c) The offender shall have the right to advice of counsel in proceedings before the United States Parole Commission under section 4106A of this title and in an appeal from a determination of such Commission under such section. If the offender is financially unable to obtain counsel, counsel for such proceedings and appeal shall be appointed under section 3006A of this title.

¹So in original. Probably should be “section 3006A of this title;”. See 1990 Amendment note below.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1218; amended Pub. L. 97-258, §3(e)(2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 100-690, title VII, §7101(d), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101-647, title XXXV, §3598, Nov. 29, 1990, 104 Stat. 4931.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647 substituted “section 3006A of this title” for “the Criminal Justice Act (18 U.S.C. 3006A)” in par. (1) and for “the Criminal Justice Act (18 U.S.C. 3006(a))” in par. (2).

1988—Pub. L. 100-690 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1982—Par. (2). Pub. L. 97-258 substituted “section 3324(a) and (b) of title 31” for “section 3648 of the Revised Statutes as amended (31 U.S.C. 529)”.

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 240B of the Immigration and Nationality Act and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been removed from this country.

(c) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and removed from the United States.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1219; amended Pub. L. 104-208, div. C, title III, §308(d)(4)(U), (e)(1)(Q), (2)(I), (g)(3)(B), (5)(A)(iv), Sept. 30, 1996, 110 Stat. 3009-619, 3009-620, 3009-622, 3009-623.)

REFERENCES IN TEXT

Section 240B of the Immigration and Nationality Act, referred to in subsec. (a), is classified to section 1229c of Title 8, Aliens and Nationality.

Section 240 of the Immigration and Nationality Act, referred to in subssecs. (b) and (c), is classified to section 1229a of Title 8.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, §308(g)(5)(A)(iv)(I), substituted “section 240B of the Immigration and Nationality Act” for “section 1252(b) or section 1254(e) of title 8, United States Code.”

Subsec. (b). Pub. L. 104-208, §308(g)(5)(A)(iv)(II), substituted “section 240 of the Immigration and Nationality Act” for “section 1252 of title 8, United States Code.”

Pub. L. 104-208, §308(e)(1)(Q), (2)(I), substituted “removal” for “deportation” and “removed” for “deported”.

Subsec. (c). Pub. L. 104-208, §308(g)(3)(B), substituted “240 of the Immigration and Nationality Act” for “1226 of title 8, United States Code”.

Pub. L. 104-208, §308(d)(4)(U), (e)(2)(I), substituted “removal” for “exclusion and deportation” and “removed” for “deported”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released

be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate judge within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate judge ordering the offender to appear or to be brought before the issuing authority. If the justice, judge, or magistrate judge finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1219; amended Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” wherever appearing in subsec. (b) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.